

NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-1443

UNITED STATES OF AMERICA

v.

LEONARD SHOUGH,
Appellant

On Appeal From the United States District Court
For the Western District of Pennsylvania
(D.C. No. 04-cr-00009E)
District Judge: Honorable Maurice B. Cohill, Jr.

Submitted Under Third Circuit LAR 34.1(a)
October 21, 2005
Before: SMITH, BECKER and NYGAARD, *Circuit Judges*

(Filed: October 26, 2005)

OPINION

BECKER, *Circuit Judge*.

Pursuant to a plea agreement, appellant Leonard Shough entered a plea of guilty to the first count of an eight-count indictment charging him with mail and wire fraud. Shough was sentenced to 84 months' imprisonment followed by a term of three years' supervised release.

Appellant challenges his sentence under *United States v. Booker*, 543 U.S. —, 125 S. Ct. 738 (2005), the sentence having been based in part upon findings made by the District Court as to amount of loss and Shough's conduct in assuming another's identity. Having determined that the sentencing issues appellant raises are best determined by the District Court in the first instance, we will vacate the sentence and remand for resentencing in accordance with *Booker*. See *United States v. Davis*, 407 F.3d 162 (3d Cir. 2005) (*en banc*).